



# Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108  
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss

COMMISSION ADJUDICATORY  
DOCKET NO. 05-0006

IN THE MATTER  
OF  
JAMES BYRNE

## DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and James Byrne pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On May 12, 2004, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Byrne. The Commission concluded its inquiry and, on July 26, 2005, found reasonable cause to believe that Byrne violated G.L. c. 268A, § 3.

The Commission and Byrne now agree to the following findings of fact and conclusions of law:

### -Findings of Fact-

1. Byrne is the president and co-owner of Construction Monitoring Services, Inc. ("CMS"). CMS works as a consultant to oversee design and construction on municipal building projects.
2. In 2002, the Old Rochester Regional School District (the "District") contracted with CMS to be the project manager for the expansion of the junior-senior high school (the "Project").
3. At all relevant times, Steven Shiraka was the facilities and grounds manager for the District. Shiraka was listed as an "advisor" on the Project and acted as the school superintendent's project manager in overseeing the Project. As such, Shiraka attended every job and construction meeting and reported back to the school superintendent on a regular basis on the Project's progress, including evaluating CMS' work performance.
4. On at least two occasions during late 2002, Shiraka made negative reports to the Superintendent regarding CMS' performance on the Project. As a result of those reports, the Superintendent approached Byrne with Shiraka's concerns making it clear that CMS' performance had to improve.
5. In winter 2002, CMS planned a ski outing for its employees that included weekend accommodations, lift tickets and ski lessons. Shortly after the Superintendent's conversation with Byrne, Byrne at the Project site approached Shiraka and offered to pay for Shiraka and his family to go on the ski weekend. The cost of the weekend was approximately \$500. Shiraka declined Byrne's offer.
6. At the time of the ski trip offer, Shiraka's reporting responsibilities were ongoing and had the potential to continue to significantly impact CMS' work on the Project, costs, and through the District, could affect CMS' payment for their work.

### **-Conclusions of Laws-**

7. General Laws chapter 268A, § 3(a) prohibits anyone, otherwise than as provided by law for the proper discharge of official duty, from directly or indirectly giving or offering anything of substantial value to any public employee for or because of any official act performed or to be performed by such employee.

8. As the District's facilities and grounds manager, Shiraka was a public employee.

9. CMS's contract with the District to be the project manager for the Project was a particular matter. Shiraka's regular reports to the school superintendent on CMS' work on the Project were official acts. Shiraka's reports significantly impacted CMS' work on the Project and could ultimately affect its costs and receipt of payment on the contract.

10. An expense paid ski weekend for a family is an item of substantial value.

11. In offering the ski trip to Shiraka, Byrne intended to influence Shiraka as to the tenor and substance of Shiraka's future reports as to CMS' job performance.

12. By so offering an expense-paid family ski weekend to Shiraka, Byrne offered something of substantial value to a public employee for or because of official acts to be performed by Shiraka. The free ski weekend was not otherwise provided by law for the proper discharge of official duties. Therefore Byrne violated G.L. c. 268A, § 3(a) by making the offer.

### **-Resolution-**

In view of the foregoing violation of G.L. c. 268A by Byrne, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Byrne:

- (1) that Byrne pay to the Commission the sum of \$2,000.00 as a civil penalty for violating G.L. c. 268A, § 3(a); and
- (2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE:** November 15, 2005